

OCT 07 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT D. STEWART, Jr.,

Defendant - Appellant.

No. 06-10429

D.C. No. CR-03-00061-HDM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Howard D. McKibben, District Judge, Presiding

Submitted September 14, 2009<sup>\*\*</sup>

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Robert D. Stewart, Jr., appeals the 292-month sentence imposed following his jury-trial conviction for retaliating against a federal official, solicitation to

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

commit a crime of violence, and making false statements, in violation of 18 U.S.C. §§ 115(a)(1)(B), 373(a), and 1001(a)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Stewart contends the district court committed procedural error at sentencing. The district court did not procedurally err because it considered Stewart's mitigation arguments and stated the reasons for the sentence. *See United States v. Perez-Perez*, 512 F.3d 514, 516 (9th Cir. 2008).

Stewart also contends that his sentence is substantively unreasonable and violates the Eighth Amendment. In light of the totality of the circumstances and the sentencing factors of 18 U.S.C. § 3553(a), the sentence at the low-end of the advisory guidelines range was reasonable and not excessive. *See Gall v. United States*, 128 S. Ct. 586, 597-98 (2007); *United States v. Meiners*, 485 F.3d 1211, 1212-13 (9th Cir. 2007) (per curiam) (rejecting Eighth Amendment challenge to sentence imposed following convictions for advertisement, distribution, and possession of child pornography).

**AFFIRMED.**